IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and the STATE OF LOUISIANA,	)
Plaintiffs,	)
v.	)
CHALMETTE REFINING, L.L.C.	)
Defendant.	)

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") and the State of Louisiana ("Louisiana"), by and through its Attorney General, on behalf of the people of the State of Louisiana, and the Louisiana Department of Environmental Quality ("LDEQ"), by and through its Secretary, allege:

NATURE OF ACTION

1. This is a civil action brought against Chalmette Refining, L.L.C. (referred to herein as "CRLLC" or the "Defendant") pursuant to: (i) the Clean Air Act (the "CAA"), 42 U.S.C. § 7401 et seq.; (ii) Sections 103(a) and 109(c) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9603(a) and § 9609(c); (iii) Sections 304 and 325(b)(3) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11004 and § 11045(b)(3); and (iv) the Louisiana Environmental Quality Act, La. Rev. Stat. Ann. § 30:2001 et seq. This action seeks civil penalties and injunctive relief for violation of certain requirements under those laws at CRLLC's petroleum refinery located in Chalmette, Louisiana (the "Chalmette Refinery").

2. Upon information and belief, the Chalmette Refinery has been and is in violation of EPA's regulations implementing the following Clean Air Act statutory and regulatory requirements applicable to the petroleum refining industry: (i) Prevention of Significant Deterioration ("PSD"), Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and Non-Attainment New Source Review, Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. § 51.165, Part 51, Appendix S, and § 52.24; (ii) New Source Performance Standards promulgated at 40 C.F.R. Part 60, Subparts A and J; (iii) Leak Detection and Repair standards at 40 C.F.R. Part 60, Subparts VV and GGG, Part 61, Subparts J and V, and Part 63, Subparts F, H, and CC; and (iv) the National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF.

3. Upon information and belief, the Chalmette Refinery has been and is in violation of the Louisiana Environmental Quality Act, and its implementing regulations at the

Environmental Regulatory Code Title 33:Part III, and the state implementation plan ("SIP") of Louisiana which incorporates and/or implements the federal regulations cited in Paragraph 2.

4. Upon information and belief, the Chalmette Refinery has been in violation of certain reporting requirements imposed by CERCLA Section 103, 42 U.S.C. § 9603, and EPCRA Section 304, 42 U.S.C. § 11004, as detailed below in the Eighth Claim for Relief.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; CAA Sections 113(b) and 304(a), 42 U.S.C. §§ 7413(b) and 7604(a); CERCLA Sections 109(c) and 113(b), 42 U.S.C. § 9609(c) and § 9613(b); and EPCRA Section 325(b), 42 U.S.C. § 11045(b)(3).

6. This Court has personal jurisdiction over the Defendant, which is a limited liability company doing business in the State of Louisiana, pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b); CERCLA Section 113(e), 42 U.S.C. § 9613(e); and EPCRA Section 325, 42 U.S.C. § 11045.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a); CAA Sections 113(b) and 304(c), 42 U.S.C. §§ 7413(b) and 7604(c); CERCLA Section 113(b), 42 U.S.C. § 9613(b); and EPCRA Section 325(b)(3), 42 U.S.C. § 11045(b)(3). The Defendant is found in and transacts business in the Eastern District of Louisiana and certain acts or omissions which form the basis for claims asserted in this Complaint occurred within this district. In addition, the Defendant has agreed to this venue.

NOTICE TO STATES

8. The United States has provided notice of the commencement of this action to the State of Louisiana in accordance with the requirements of CAA Sections 113(a)(1) and 113(b), 42 U.S.C. § 7413(a)(1) and 113(b).

NOTICE TO THE EPA ADMINISTRATOR AND TO CRLLC

9. Louisiana has provided notice of the commencement of this action to the Administrator of EPA and to CRLLC in accordance with the requirements of CAA Section 304(b), 42 U.S.C. § 7604(b).

DEFENDANT

10. The Defendant owns and/or operates a petroleum refinery in Chalmette, Louisiana which is the subject of this action.

11. The Defendant is a "person" as defined in: (i) CAA Section 302(e), 42 U.S.C. § 7602(e); and (ii) CERCLA Section 101(21),42 U.S.C. § 9601(21).

GENERAL CLEAN AIR ACT ALLEGATIONS

12. The Clean Air Act establishes a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. CAA Section 101(b)(1), 42 U.S.C. § 7401(b)(1).

New Source Review Requirements

13. CAA Section 108(a), 42 U.S.C. § 7408(a), requires EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, CAA Section 109, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public

health and welfare. Pursuant to CAA Sections 108 and 109, EPA has identified and promulgated NAAQS for sulfur dioxide ("SO_2"), nitrogen dioxide ("NO_2"), particulate matter ("PM"), carbon monoxide ("CO") and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11. Certain precursors to ozone formation, such as volatile organic compounds ("VOCs") and nitrogen oxides ("NOx") are regulated as part of the air quality standards for ozone itself.

14. Under CAA Section 107(d), 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

15. CAA Section 110, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS. Upon EPA approval, SIP requirements are Federally enforceable under CAA Section 113, 42 U.S.C. §§ 7413(a), (b); 40 C.F.R. § 52.23.

16. To help ensure attainment and maintenance of the NAAQS, the CAA requires a comprehensive new source review program (the "NSR" program) with two main facets, which are discussed in greater detail below. The NSR Program includes: (i) requirements governing the prevention of significant deterioration in areas designated as attaining the ambient air quality standards (the "PSD" program); and (ii) new source review requirements applicable to areas designated as non-attainment for a particular pollutant (the so-called "Nonattainment NSR" program).

17. The PSD program and the Nonattainment NSR program both impose a variety of requirements for new or modified sources that would increase emissions of regulated pollutants, including requirements that the source owner/operator obtain a pre-construction permit and take steps to control air pollutant emissions from the source. As detailed below, EPA has promulgated its own PSD and Nonattainment NSR regulations, and many states have comparable regulations that are enforceable by EPA as part of each state's SIP.

Prevention of Significant Deterioration Requirements

18. Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as attaining the NAAQS standards. The PSD program requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process.

19. CAA Section 165(a), 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year ("tpy") or more of any air pollutant.

20. CAA Sections 110(a)(2)(C) and 161, 42 U.S.C. §§ 7410(a)(2)(C) and 7471, require states to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable. A state may comply with CAA Sections 110(a) and 161 by having its own

PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

21. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

22. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for ozone, 40 tons per year of VOC; for CO, 100 tons per year; for NOx, 40 tons per year; for SO_2, 100 tons per year.

23. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant quantities.

24. Pursuant to the PSD regulations, any owner or operator who commences construction or modification of a major source without applying for and receiving approval for such construction or modification is subject to an enforcement action. 40 C.F.R. § 52.21(s).

Nonattainment New Source Review Requirements

25. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, establishes NSR program requirements for areas designated as nonattainment for purposes of meeting the NAAQS standards. The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Clean Air Act Amendments, Pub. Law 101-549, effective November 15, 1990, the Nonattainment NSR provisions were set forth in 42 U.S.C. §§ 7501-08.

26. Under CAA Section 172(c)(5), 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503. Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

27. CAA Section 173, 42 U.S.C. § 7503, requires that, in order to obtain a Nonattainment NSR permit, the source must, among other things: (i) obtain federally enforceable emission offsets at least as great as the new source's emissions; (ii) comply with the lowest achievable emission rate as defined in CAA Section 171(3), 42 U.S.C. § 7501(3); and (iii) analyze alternative sites, sizes, production processes, and environmental control techniques for the proposed source and demonstrate that the benefits of the proposed source significantly

outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

28. CAA Section 182(f), 42 U.S.C. § 7511a(f), sets forth requirements to take effect no later than November 15, 1992, relating to the construction and operation of new or modified major stationary sources of NOx located within nonattainment areas for ozone. Section 182(f) defines NOx as a pollutant that must be treated as a contributor to the criteria pollutant ozone. For the purposes of 42 U.S.C. § 7511a, a "major stationary source" of NOx is one that emits or has the potential to emit 100 tons per year or more of a regulated pollutant. A "significant" net emissions increase of NOx is one that would result in increased emissions of 40 tons per year or more. 42 U.S.C. § 7511a.

29. As set forth in 40 C.F.R. § 52.24, no major stationary source shall be constructed or modified in any nonattainment area as designated in 40 C.F.R. Part 81, Subpart C to which any SIP applies, if the emissions from such source will cause or contribute to concentrations of any pollutant for which a NAAQS is exceeded in such area, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I, of the CAA.

Flaring and New Source Performance Standards

30. CAA Section 111(b)(1)(A), 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

31. CAA Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of EPA to promulgate regulations establishing federal standards of performance for new sources

of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2).

32. Pursuant to CAA Section 111(b)(1)(A), 42 U.S.C. § 7411(b)(1)(A), EPA has identified petroleum refineries as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

33. Pursuant to CAA Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), EPA promulgated New Source Performance Standards ("NSPS") for various industrial categories, including petroleum refineries. NSPS requirements for petroleum refineries are codified at 40 C.F.R. Part 60, Subpart J, §§ 60.100-60.109.

34. The provisions of 40 C.F.R. Part 60, Subpart J, apply to specified "affected facilities," including, inter alia, Claus sulfur recovery plants that have a capacity greater than 20 long tons per day and that commenced construction or modification after October 4, 1976, and all fluid catalytic cracking unit catalyst regenerators and fuel gas combustion devices that commenced construction or modification after June 11, 1973. 40 C.F.R. § 60.100(a),(b).

35. 40 C.F.R. § 60.102(a) establishes an emission limitation that generally prohibits the discharge into the atmosphere from any affected fluid catalytic cracking unit catalyst regenerator of: (i) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator; and (ii) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period.

36. 40 C.F.R. § 60.103(a) establishes an emission limitation that prohibits the discharge into the atmosphere from any catalytic cracking unit catalyst regenerator any gases that contain CO in excess of 500 ppm by volume (dry basis).

37. Pursuant to 40 C.F.R. § 60.104(b), the owner or operator of each affected fluid catalytic cracking unit catalyst regenerator shall comply with one of the emission limitations for control of SO_2 emissions set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3).

38. 40 C.F.R. § 60.104(a)(2) establishes an emission limitation that prohibits an affected Claus sulfur recovery plant with a reduction control system followed by incineration from discharging in excess of 250 ppm by volume (dry basis) of SO_2 at zero percent excess air. 40 C.F.R. § 60.104(a)(2) establishes an emission limitation that prohibits an affected Claus sulfur recovery plant with a reduction control system not followed by incineration from discharging in excess of 300 ppm by volume of reduced sulfur compounds and in excess of 10 ppm by volume of hydrogen sulfide, each calculated as ppm SO_2 by volume (dry basis) at zero percent excess air.

39. 40 C.F.R. § 60.104(a)(1) establishes an emission limitation that prohibits the burning in any affected fuel gas combustion device any fuel gas that contains hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10. The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from the emission limit imposed by 40 C.F.R. § 60.104(a)(1).

40. Pursuant to CAA Section 111(b), 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1-60.19, that apply to

owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60.

41. 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

42. CAA Section 111(e), 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS requirement is a violation of CAA Section 111(e).

Leak Detection and Repair

43. Several sets of EPA regulations establish leak detection and repair ("LDAR") requirements applicable to certain types of equipment at petroleum refineries. First, pursuant to CAA Section 111, 42 U.S.C. § 7411, EPA promulgated NSPS Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries at 40 C.F.R. Part 60, Subpart GGG. Subpart GGG, in turn, incorporates many of the NSPS requirements at 40 C.F.R. Part 60, Subpart VV. Second, pursuant to CAA Section 112, 42 U.S.C. § 7412, EPA promulgated national emission standards for hazardous air pollutants ("NESHAP") at 40 C.F.R. Part 61, and NESHAP requirements for particular source categories at 40 C.F.R. Part 63. The relevant NESHAP requirements are found at 40 C.F.R. Part 61, Subpart J (for equipment leaks of benzene) and Subpart V (for equipment leaks); and 40 C.F.R. Part 63, Subpart F (for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry), Subpart H (for organic hazardous air pollutants for equipment leaks) and Subpart CC (for hazardous air pollutants from petroleum refineries).

44. The focus of the LDAR program is the refinery-wide inventory of all possible leaking equipment, the regular monitoring of that equipment to identify leaks, and the repair of leaks as soon as they are identified.

Benzene Waste NESHAP

45. The CAA requires EPA to establish emission standards for each "hazardous air pollutant" ("HAP") in accordance with Section 112 of the CAA, 42 U.S.C. § 7412.

46. In March 1990, EPA promulgated national emission standards applicable to benzene-containing waste streams. Benzene is a listed HAP and a known carcinogen. The benzene waste regulations are set forth at 40 C.F.R. Part 61, Subpart FF (National Emission Standard for Benzene Waste Operations). Benzene is a naturally-occurring constituent of petroleum, petroleum products, and petroleum waste and is highly volatile. Benzene emissions can often be detected anywhere in a refinery where the petroleum product or waste materials are exposed to the ambient air.

47. Pursuant to the benzene waste NESHAP, refineries are required to calculate the total annual benzene ("TAB") content in their waste streams. If the TAB is over 10 megagrams, the refinery is required to elect a control option that will require the control of all waste streams, or control of certain select waste streams.

CAA Enforcement Provisions

48. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty, whenever any person has violated: (i) any requirement or prohibition of any applicable SIP or permit; or (ii) any other requirement or prohibition under a pertinent provision of the CAA, including, but not limited to, any NSPS or NESHAP requirement.

49. CAA Section 167, 42 U.S.C. § 7477, authorizes the United States to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD program requirements.

50. As provided by CAA Section 113(b), 42 U.S.C. § 7413(b), the Civil Penalties Inflation Adjustment Act of 1990 ("CPIAA"), 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and EPA regulations codified at 40 C.F.R. Part 19, any person who violates pertinent requirements of the CAA shall be liable for a civil penalty of up to: (i) $25,000 per day for each such violation occurring on or before January 30, 1997; (ii) $27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

51. Pursuant to CAA Section 304(a)(3), 42 U.S.C. § 7604(a)(3), Louisiana is authorized to commence a civil action against any person who is alleged to have violated NSR program requirements under Parts C or D of Title I of the CAA.

52. Pursuant to CAA Section 304(a)(1), 42 U.S.C. § 7604(a)(1), Louisiana is authorized to commence a civil action against any person who is alleged to have violated any emission standard or limitation under the CAA.

Louisiana Environmental Quality Act Requirements and Enforcement Provisions

53. The Louisiana Environmental Quality Act (the "Louisiana Act") and its implementing regulations require that any person who constructs or modifies a major stationary source must first obtain a permit. La. Rev. Stat. Ann. §§ 30:2055, 30:2057; La. Admin. Code tit. 33, III § 509.I.1. Pursuant to the Louisiana Act, La. Rev. Stat. Ann. § 30:2001 et seq., and La. Rev. Stat. § 30:2025(G) in particular, LDEQ is authorized to enforce the Louisiana Act and to institute an action for injunctive relief and civil penalties.

GENERAL CERCLA AND EPCRA ALLEGATIONS

54. CERCLA Section 103(a), 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center of a release of a hazardous substance from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the "reportable quantity"). EPA's regulations setting forth requirements for CERCLA Section 103 reporting are codified at 40 C.F.R. Part 302, and include a list of hazardous substances and their reportable quantities. See 40 C.F.R. § 302.4.

55. As provided by CERCLA Section 109(c)(1), 42 U.S.C. § 9609(c)(1), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, any person who violates the notification requirements of CERCLA Section 103(a), 42 U.S.C. § 9603(a), shall be liable to the United States for civil penalties in an amount not to exceed: (i) $25,000 per day for each day the violation continues, and $75,000 per day for each day that any second or subsequent violation continues, for any violation that occurred on or before January 30, 1997; (ii) $27,500 per day for each day the violation continues, and $82,500 per day for each day that any second or subsequent violation continues, for any violation that occurred between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each day the violation continues, and $97,500 per day for each day that any second or subsequent violation continues, for any violation that occurred after March 15, 2004.

56. EPCRA Section 304(a), 42 U.S.C. § 11004(a), and 40 C.F.R. § 355.40 require the owner and operator of a facility at which a hazardous chemical is produced, used, or stored, to immediately notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") of certain specified releases of a hazardous or extremely hazardous substance. EPA's regulations setting forth requirements for EPCRA

Section 304 reporting are codified at 40 C.F.R. Part 355, and include a list of extremely hazardous substances and their reportable quantities. See 40 C.F.R. Part 355, Appendices A and B.

57. EPCRA Section 304(c), 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under EPCRA Section 304(a), 42 U.S.C. § 11004(a), the owner or operator shall provide a written followup emergency notification providing certain specified additional information.

58. As provided by EPCRA Section 325(b)(3), 42 U.S.C. § 11045(b)(3), the CPIAA, and EPA regulations codified at 40 C.F.R. Part 19, any person who violates the notification requirements of EPCRA Section 304, 42 U.S.C. § 11004, shall be liable to the United States for civil penalties in an amount not to exceed: (i) $25,000 per day for each day the violation continues, and $75,000 per day for each day that any second or subsequent violation continues, for any violation on or before January 30, 1997; (ii) $27,500 per day for each day the violation continues, and $82,500 per day for each day that any second or subsequent violation continues, for any violation that occurred between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each day the violation continues, and $97,500 per day for each day that any second or subsequent violation continues, for any violation that occurred after March 15, 2004.

FIRST CLAIM FOR RELIEF
(CAA: NSR Violations at FCCU and Heaters and Boilers)

59. Paragraphs 1 through 58 are realleged and incorporated by reference as if fully set forth herein.

60. CRLLC owns and/or operates a fluidized catalytic cracking unit ("FCCU") at the Chalmette Refinery.

61. CRLLC owns and/or operates multiple heaters and/or boilers at the Chalmette Refinery.

62. Upon information and belief, CRLLC has modified the FCCU and/or certain heaters and/or boilers at the Chalmette Refinery.

63. Upon information and belief, certain of those FCCU/heater/boiler modifications constituted a "major modification" under the CAA and the applicable NSR program regulations, to existing major stationary sources, that resulted in a significant net emissions increase of one or more regulated criteria pollutants, including SO_2 and/or NOx.

64. Since the initial construction or major modification of the FCCU and/or certain of those heaters/boilers, CRLLC has been in violation of the CAA and the applicable NSR program regulations, by failing to undergo an appropriate new source review, by failing to obtain required NSR permits, and by failing to install and operate the best available control technology for the control of those pollutants for which a significant net emissions increase occurred.

65. Unless restrained by an Order of the Court, these violations of the CAA and the applicable NSR program regulations will continue.

66. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF
(CAA: NSPS Subpart J Violations at the FCCU Catalyst Regenerator)

67. Paragraphs 1 through 66 are realleged and incorporated by reference as if fully set forth herein.

68. CRLLC is the "owner" and/or "operator," within the meaning of CAA Section 111(a)(5), 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a fluidized catalytic cracking unit regenerator ("FCCU regenerator") at the Chalmette Refinery.

69. That FCCU regenerator is a "fluid catalytic cracking unit catalyst regenerator" within the meaning of 40 C.F.R. § 60.101(n), and a "stationary source" within the meaning of CAA Sections 111(a)(3) and 302(z), 42 U.S.C. §§ 7411(a)(3) and 7602(z).

70. Upon information and belief, that FCCU regenerator is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of CAA Section 111(a)(2), 42 U.S.C. § 7411(a)(2), with respect to certain regulated pollutants, including SO_2, CO, PM, and/or opacity.

71. The FCCU regenerator is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J, with respect to certain regulated pollutants, including SO_2, CO, PM, and/or opacity.

72. Among other requirements imposed by NSPS Subpart J, air emissions from the FCCU regenerator are subject to the applicable NSPS Subpart J emission limitations for SO_2, CO, PM, and/or opacity.

73. Upon information and belief, the FCCU regenerator at the Chalmette Refinery has been operated in violation of the applicable NSPS Subpart J emission limitations for SO_2, CO, PM, and/or opacity.

74. Unless restrained by an Order of the Court, these violations of the CAA and the applicable NSPS regulations will continue.

75. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF
(CAA: NSPS Subpart J Violations at the Sulfur Recovery Plant)

76. The allegations in Paragraphs 1 through 75 are hereby realleged and incorporated by reference as if fully set forth herein.

77. CRLLC is the "owner" and/or "operator," within the meaning of CAA Section 111(a)(5), 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of a sulfur recovery plant ("SRP") at the Chalmette Refinery.

78. That SRP is a "Claus sulfur recovery plant" within the meaning of 40 C.F.R. § 60.101(i), and a "stationary source" within the meaning of CAA Sections 111(a)(3) and 302(z), 42 U.S.C. §§ 7411(a)(3) and 7602(z).

79. The SRP has a capacity of more than 20 long tons of sulfur per day.

80. Upon information and belief, the SRP is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of CAA Section 111(a)(2), 42 U.S.C. § 7411(a)(2).

81. The SRP is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

82. Among other requirements imposed by NSPS Subpart J, air emissions from the SRP are subject to the applicable NSPS Subpart J emission limitations for Claus sulfur recovery plants.

83. Upon information and belief, the SRP at the Chalmette Refinery has been operated in violation of the applicable NSPS Subpart J emission limitations for Claus sulfur recovery plants.

84. Unless restrained by an Order of the Court, these violations of the CAA and the applicable NSPS regulations will continue.

85. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

FOURTH CLAIM FOR RELIEF
(CAA: NSPS Subpart J Violations at Flaring Devices and Heaters and Boilers)

86. The allegations in Paragraphs 1 through 85 are hereby realleged and incorporated by reference as if fully set forth herein.

87. CRLLC is the "owner" and/or "operator," within the meaning of CAA Section 111(a)(5), 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of flaring devices and heaters and boilers located at the Chalmette Refinery.

88. Each such flaring device, heater, or boiler is a "fuel gas combustion device" within the meaning of 40 C.F.R. § 60.101(g), and a "stationary source" within the meaning of CAA Sections 111(a)(3) and 302(z), 42 U.S.C. §§ 7411(a)(3) and 7602(z).

89. Upon information and belief, certain of those flaring devices, heaters, and/or boilers are "affected facilities" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and "new sources" within the meaning of CAA Section 111(a)(2), 42 U.S.C. § 7411(a)(2).

90. Each such flaring device, heater, and/or boiler is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

91. Among other requirements imposed by NSPS Subpart J, each such flaring device, heater, and/or boiler is subject to the applicable NSPS Subpart J emission limitations for fuel gas combustion devices.

92. Upon information and belief, certain of the flaring devices, heaters, and/or boilers at the Chalmette Refinery that are "affected facilities" under NSPS Subpart J have been operated in violation of the applicable NSPS Subpart J emission limitations for fuel gas combustion devices.

93. Unless restrained by an Order of the Court, these violations of the CAA and the applicable NSPS regulations will continue.

94. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

FIFTH CLAIM FOR RELIEF
(CAA: NSPS Subpart A, 40 C.F.R. § 60.11(d))
(Failing to Operate and Maintain the FCCU Regenerator, Sulfur Recovery Plant, Heaters and Boilers, and Flaring Devices in a Manner Consistent with Good Air Pollution Control Practice)

95. The allegations in Paragraphs 1 through 94 are hereby realleged and incorporated by reference as if fully set forth herein.

96. Upon information and belief, under circumstances that did not represent good air pollution control practices, CRLLC has emitted certain of the following pollutants in violation of 40 C.F.R. § 60.11(d): (i) SO_2, PM, and/or CO from the FCCU regenerator at the Chalmette Refinery; and (ii) SO_2 from the SRP and/or certain flaring devices, heaters, and/or boilers at the Chalmette Refinery.

97. Unless restrained by an Order of the Court, these violations of the CAA and the applicable NSPS regulations will continue.

98. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

SIXTH CLAIM FOR RELIEF
(Leak Detection and Repair Requirements)

99. The allegations in Paragraphs 1 through 98 are realleged and incorporated by reference as if fully set forth herein.

100. CRLLC is required under 40 C.F.R. Part 60, Subpart GGG, to comply with standards set forth at 40 C.F.R. § 60.592, which references standards set forth at 40 C.F.R. §§ 60.482-1 to 60.482-10, and alternative standards set forth at 40 C.F.R. §§ 60.483-1 to

60.483-2, for certain of its refinery equipment in light liquid and gas and/or vapor service, constructed or modified after January 4, 1983.

101. Pursuant to 40 C.F.R. § 60.483-2(b)(1), an owner or operator of valves in light liquid and gas and/or vapor service must initially comply with the LDAR requirements set forth in 40 C.F.R. § 60.482-7, including the use of Standard Method 21 to monitor for such leaks.

102. Pursuant to 40 C.F.R. Part 61, Subpart J, CRLLC is required to comply with the LDAR requirements set forth in 40 C.F.R. Part 61, Subpart V, for certain specified equipment in light liquid and gas and/or vapor benzene service.

103. Upon information and belief, CRLLC has violated such LDAR requirements at the Chalmette Refinery by failing to: (i) accurately monitor certain valves and other components as required by Standard Method 21; (ii) report the valves and other components that were leaking; and/or (iii) repair leaking valves and other components in a timely manner.

104. Unless restrained by an Order of the Court, these violations of the CAA and the applicable LDAR regulations will continue.

105. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

SEVENTH CLAIM FOR RELIEF
(Benzene Waste NESHAP)

106. The allegations in Paragraphs 1 through 105 are hereby re-alleged and incorporated by reference as if fully set forth herein.

107. At times relevant to this Complaint, the Chalmette Refinery had a total annual benzene quantity from refinery waste of over 10 Mg/yr, and the Chalmette Refinery has been

subject to the requirements of the Benzene Waste NESHAP regulations set forth at 40 C.F.R. § 61.342.

108. Upon information and belief, at the Chalmette Refinery, CRLLC has violated Benzene Waste NESHAP requirements by failing to manage and treat benzene-containing facility waste in accordance with the standards established by 40 C.F.R. § 61.342.

109. Unless restrained by an Order of the Court, these violations of the CAA and the applicable Benzene Waste NESHAP regulations will continue.

110. CRLLC's violations of the CAA, as set forth in this Claim for Relief, make the Defendant subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each violation on or before January 30, 1997; (ii) $27,500 per day for each violation between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each violation occurring after March 15, 2004.

EIGHTH CLAIM FOR RELIEF
(Failure to Report Certain Releases as Required By CERCLA Section 103 and EPCRA Section 304)

111. The allegations in Paragraphs 1 through 110 are hereby re-alleged and incorporated by reference as if fully set forth herein.

112. Upon information and belief, CRLLC violated release reporting requirements under CERCLA Section 103, 42 U.S.C. § 9603, on certain occasions between October 31, 1997 and the date of this Complaint by failing to report certain releases of sulfur dioxide and/or hydrogen sulfide that resulted from Acid Gas Flaring Incidents at the Chalmette Refinery. Upon information and belief, CRLLC failed to report such releases to the National Response Center as required by CERCLA Section 103.

113. Upon information and belief, CRLLC violated release reporting requirements under EPCRA Section 304, 42 U.S.C. § 11004, on certain occasions between October 31, 1997 and the date of this Complaint by failing to report certain releases of sulfur dioxide and/or hydrogen sulfide that resulted from Acid Gas Flaring Incidents at the Chalmette Refinery. Upon information and belief, for such releases, CRLLC failed to make an immediate report to the appropriate SERC and/or to the appropriate LEPC, and/or failed to provide a written followup notice as soon as practicable after the release, as required by EPCRA Section 304, 42 U.S.C. § 11004.

114. CRLLC's violations of release reporting requirements under CERCLA Section 103 and EPCRA Section 304, as set forth in this Claim for Relief, make CRLLC subject to injunctive relief and civil penalties of up to: (i) $25,000 per day for each day the violation continued, and $75,000 per day for each day that any second or subsequent violation continued, for any violation that occurred on or before January 30, 1997; (ii) $27,500 per day for each day the violation continued, and $82,500 per day for each day that any second or subsequent violation continued, for any violation that occurred between January 30, 1997 and March 15, 2004; and (iii) $32,500 per day for each day the violation continued, and $97,500 per day for each day that any second or subsequent violation continued, for any violation that occurred after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States and the State of Louisiana, respectfully request that this Court:

1. Order CRLLC to immediately comply with the statutory and regulatory requirements cited in this Complaint;

2. Order CRLLC to take appropriate measures to mitigate the effects of its violations;

3. Assess civil penalties against CRLLC for up to the amounts provided in the applicable statutes; and

4. Grant the United States and Louisiana such other relief as this Court deems just and proper.

FOR THE UNITED STATES OF AMERICA

Date: _____

_____

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: _____

_____

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FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

MIKE D. McDANIEL, Ph.D.
Secretary

Date: _____ _____

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CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing COMPLAINT to be served by first class mail, postage pre-paid, on the following persons, in accordance with Paragraph 227 of the proposed Consent Decree in this case:

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Dated: _____ _____
Randall M. Stone

COLLATERAL PROCEEDINGS NOTIFICATION UNDER LOCAL RULE 3.1

The undersigned counsel for the United States is informed and believes that the civil action commenced by the attached Complaint involves subject matter that either comprises all or a material part of the subject matter or operative facts in the following action pending before this Court:

St. Bernard Citizens for Environmental Quality v. Chalmette Refining, L.L.C.,
Civil Action No. 04-398 (E.D. La.) (Judge Sarah S. Vance Presiding)

The newly-filed action and the pending action both seek injunctive relief and civil penalties payable to the United States Treasury for alleged violations of certain federal environmental laws – including the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. – at a petroleum refinery in Chalmette, Louisiana owned by Chalmette Refining, L.L.C.

Respectfully submitted by,

THE UNITED STATES OF AMERICA

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division

Date: _____

_____

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